IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

Commissioners of Public Works of the City) Civil Action No.	2:21-cv-42-RMG
of Charleston (d/b/a Charleston Water)	
System), Individually and on Behalf of All)	
Others Similarly Situated,))	
Plaintiffs,))	
-versus-))	
Costco Wholesale Corporation, CVS Health)	
Corporation, Kimberly-Clark Corporation,)	
The Procter & Gamble Company, Target)	
Corporation, Walgreens Boots Alliance,) \	
Inc. And Wal-Mart, Inc.	<i>)</i>)	
Defendants.))	
	<i>)</i>)	

DEFENDANTS' MEMORANDUM OF LAW IN RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Defendants Costco Wholesale Corporation, CVS Health Corporation, The Procter & Gamble Company, Target Corporation, and Walgreens Boots Alliance, Inc. ("Defendants"), by their undersigned attorneys, respectfully submit this Memorandum of Law in Response to the Motion for Preliminary Approval of Class Action Settlement ("Settlement Motion") filed by the Commissioners of Public Works of the City of Charleston ("Plaintiff").

THE COURT SHOULD ASCERTAIN SUBJECT MATTER JURISDICTION I. PRIOR TO DECIDING THE SETTLEMENT MOTION

The Court should deny or hold in abeyance Plaintiff's Settlement Motion until the Court ascertains whether it has subject matter jurisdiction in this case. As set forth in Defendants' Joint Motion to Dismiss (ECF No. 46), this Court lacks subject matter jurisdiction and should dismiss

the action under Fed. R. Civ. P. 12(b)(1) because Plaintiff lacks standing under Article III of the U.S. Constitution to prosecute its claims. See ECF No. 46-1 at pp. 4-11. Defendants will be prejudiced by the approval of a class action settlement prior to the Court's adjudication of subject matter jurisdiction, because if Plaintiff lacks Article III standing, this case should be terminated rather than prolonged.

Article III standing must be ascertained by a district court prior to considering a motion for preliminary approval of a classwide settlement. See Murkansky v. Godiva Chocolatier, Inc., 979 F. 3d. 917 (11th Cir. 2020). The Supreme Court has confirmed that a "court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing." Frank v. Gaos, 139 S. Ct. 1041, 1046, 203 L.Ed.2d 404 (2019). See also Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) ("Without jurisdiction the court cannot proceed at all in any cause.") (citation omitted); Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 479– 80 (4th Cir. 2005).

Furthermore, Plaintiff and Kimberly-Clark can neither waive nor stipulate to the existence of subject matter jurisdiction. See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982).

Therefore, the Court must first decide Defendants' Joint Motion to Dismiss prior to considering the Settlement Motion. See ECF No. 46

- 2 -

Although defendant Kimberly-Clark did not join in the Joint Motion to Dismiss on account of the Settlement Motion, jurisdiction is lacking as to all named defendants (including Kimberly Clark), since Plaintiff advanced the same deficient allegations and claims against all defendants. See generally, Complaint.

II. <u>CONCLUSION</u>

Defendants respectfully request that this Court deny the Settlement Motion, or in the alternative, delay any consideration of the Settlement Motion until after the Court rules on Defendants' Joint Motion to Dismiss.

Respectfully submitted,

Counsel for Walgreens Boots Alliance,	Attorneys for Costco Wholesale	
Inc.	Corporation, CVS Health Corporation	
	and Target Corporation	
ANDERSON REYNOLDS & STEPHENS	TUCKER ELLIS, LLP	
LLC		
	s/ John Q. Lewis	
s/ Lisa A. Reynolds	John Q. Lewis, Esquire	
Lisa A. Reynolds, Esquire	950 Main Ave, Suite 1100	
W. Coleman Lawrimore, Esquire	Cleveland, OH, 44113-7213	
Federal Bar #	John.lewis@tuckerlewis.com	
37 ½ Broad Street	Office (216) 696-5235	
P.O. Box 87		
Charleston, SC 29402	And	
(843) 723-0185		
lreynolds@arslawsc.com	HOOD LAW FIRM	
clawrimore@arslawsc.com		
	s/ Molly H. Craig	
and	Molly H. Craig, Esquire	
	172 Meeting St.	
CHUHAK & TECSON, P.C.	Charleston, SC 29401	
	Office (843) 577-1215	
s/ David Tecson	Molly.craig@hoodlaw.com	
David Tecson, Esquire		
Loretto Kennedy, Esquire		
30 South Wacker Drive, Ste 2600		
Chicago, IL 60606		
(312) 444-9300		
dtecson@chuhak.com		
lkennedy@chuhak.com		
Attorneys for The Procter and Gamble		
Co.		

KRAMER LEVIN NAFTALIS & FRANKEL LLP

s/ Eileen Patt

Eileen Patt, Esquire
Harold P. Weinberger, Esquire
Harry P. Morgenthau, Esquire
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Office (212) 715-9347
EPatt@Kramerlevin.com
hmorgenthau@kramerlevin.com
nweinbergger@kramerlevin.com

And

NELSON MULLINS RILEY & SCARBOROUGH, LLP

s/ Robert W. Foster, Jr.

Robert W. Foster, Jr. Esquire Scott D. MacLatchie, Jr. Esquire PO Box 11070 Columbia, SC 29211 Office 803-799-2000 Robbie.foster@nelsonmullins.com Scott.maclatchie@nelsonmullins.com

And

Andrew M. Connor, Esquire
Nelson Mullins Riley & Scarborough, LLP
151 Meeting St., Suite 600
Charleston, SC 29401
Office (843) 853-5200
Andrew.connor@nelsomullins.com